

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NOKIA CORPORATION and
NOKIA, INC.,

Plaintiffs.

y.

INTERDIGITAL COMMUNICATIONS
CORPORATION and INTERDIGITAL
TECHNOLOGY CORPORATION,

Defendants.

C. A. No. 05-16-JJF

JURY TRIAL DEMANDED

**DEFENDANTS' MOTION TO DISMISS FIRST AMENDED
COMPLAINT PURSUANT TO FEDERAL RULES OF
CIVIL PROCEDURE 12(B)(1), 12(B)(6), AND 12(H)(3)**

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Dated: February 21, 2007

Defendants InterDigital Communications Corporation and InterDigital Technology Corporation (collectively, "InterDigital") file this Motion to Dismiss First Amended Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(h)(3).¹ In support, InterDigital respectfully shows this Court as follows:

1. On January 12, 2005, Plaintiffs Nokia Corporation and Nokia Inc. (collectively, "Nokia") filed their Original Complaint, seeking: (1) a declaratory judgment of noninfringement and invalidity as to certain patents held by InterDigital; and (2) relief under Section 43 of the Lanham Act (15 U.S.C. § 1125(a)). D.I. 1. InterDigital filed a motion to dismiss Nokia's Original Complaint. D.I. 10.

2. On December 21, 2005, the Court granted InterDigital's motion to dismiss in part and dismissed all of Nokia's claims except for Nokia's claim under the Lanham Act. D.I. 25-26.

¹ On November 16, 2006, after exhausting contractually-required attempts to resolve its dispute with Nokia regarding the use of certain confidential licensing presentations, InterDigital initiated an arbitration proceeding with the International Chamber of Commerce to resolve Nokia's intended use of those presentations. On November 17, 2006, InterDigital filed in this Court a motion to compel arbitration and stay litigation pending completion of arbitration. D.I. 75. InterDigital's motion to compel arbitration is currently pending, and InterDigital files this brief and motion to dismiss expressly subject to and without waiving that motion. The arguments set forth in InterDigital's motion to dismiss and this brief are distinct from any issue to be decided by the I.C.C. arbitration panel and, therefore, as a matter of case management should be considered even while and after the Court decides InterDigital's motion to compel/stay.

InterDigital also files its Answer and Original Counterclaims contemporaneously with and subject to and without waiving this Motion to Dismiss and subject to and without waiving the requests for relief set forth herein and in InterDigital's Motion to Compel Arbitration and Stay Litigation Pending Completion of Arbitration, Motion for Leave to File Motion for Summary Judgment, and this Motion to Dismiss. InterDigital reserves the right to plead additional counterclaims and request additional relief if the Court denies the above motions.

3. On December 30, 2006, Nokia filed a motion for leave to file an amended complaint, which the Court granted on February 6, 2007. D.I. 108-10, 151.

4. InterDigital now files this motion to dismiss any and all claims pled in Nokia's First Amended Complaint. The grounds for InterDigital's motion are fully set forth in the Opening Brief in Support of Defendants' Motion to Dismiss First Amended Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(h)(3) and supporting materials filed contemporaneously with this motion and brief in support.

5. InterDigital further requests that this Court award InterDigital its reasonable attorney's fees and costs in this litigation and reserves the right to submit separate and additional briefing in support of its entitlement to such fees and costs.

CONCLUSION

For the reasons stated above, Defendants InterDigital Communications Corporation and InterDigital Technology Corporation respectfully request that this Court: (1) grant InterDigital's Motion to Dismiss First Amended Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(h)(3); and (2) dismiss with prejudice any and all of Plaintiffs Nokia Corporation and Nokia Inc.'s claims in their First Amended Complaint and enter a take-nothing judgment on any and all such claims.

If this Court grants such relief in full or in part, InterDigital further requests that this Court – pursuant to 35 U.S.C. § 285, 15 U.S.C. § 1117(a), 28 U.S.C. § 1919, Federal Rule of Civil Procedure 54(d), District of Delaware Local Rule 54.1(a)(1), and any other applicable law – award InterDigital its reasonable attorney's fees and costs in this litigation. InterDigital expressly reserves the right to submit separate and additional briefing in support of its entitlement to such attorney's fees and costs.

InterDigital further requests all other relief to which it may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on February 21, 2007, the attached document was hand delivered to the following person(s) and was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading:

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